

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

Regulation H-2009-02

HEALTH CARE STOP LOSS INSURANCE

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Section 1. Authority and Purpose.

This regulation is promulgated under the authority granted to the Commissioner by Title 8 V.S.A. § 15 and Title 8 V.S.A. § 6015 in order to establish criteria for the issuance of health care stop loss insurance policies and contracts. Nothing in this regulation shall be construed as imposing any requirement or duty on any person other than an insurer or as treating any health care stop loss policy as a direct policy of health insurance.

Section 2. Scope.

This regulation applies to each health care stop loss insurance policy or contract that is delivered or issued for delivery by an insurer in Vermont.

Section 3. Definitions.

As used in this regulation:

- A. “Actuarial Certification” means a written and signed statement by a member in good standing of the American Academy of Actuaries, or other individual acceptable to the Commissioner, that an insurer is in compliance with the provisions of this regulation, based upon the

individual's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the insurer in establishing attachment points and other applicable determinations in conjunction with the provision of health care stop loss insurance coverage.

- B. "Attachment Point" means the claims amount incurred by a group health plan beyond which the health care stop loss insurer incurs a liability for payment.
- C. "Commissioner" means the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration.
- D. "Department" means the Vermont Department of Banking, Insurance, Securities and Health Care Administration.
- E. "Expected Claims" means the amount of claims that, in the absence of a health care stop loss policy or other insurance, are projected to be incurred by a group health plan.
- F. "Health Care Stop Loss Insurance" means insurance or other risk-transfer arrangement that is purchased by a group health plan or by the sponsor or trustee of such plan (or by any guarantor or indemnitor thereof other than a licensed insurance company or reinsurer), to limit the exposure of such person against losses sustained by such plan.
- G. "Insurer" means any insurance company, including a captive insurance company formed or licensed under Chapter 141 of Title 8, Vermont Statutes Annotated (other than a pure captive), health maintenance organization, nonprofit hospital service corporation and nonprofit medical service corporation, and to the extent permitted by federal law, a risk retention group chartered and licensed in any state.
- H. "Small Employer" has the same meaning provided in 8 V.S.A. § 4080a, as amended.
- I. "Small Group" has the same meaning provided in 8 V.S.A. § 4080a, as amended.

Section 4. Health Care Stop Loss Insurance Coverage Standards.

- A. An insurer shall not issue a health care stop loss insurance policy or contract that:

- a) Has an annual attachment point for claims incurred per individual which is lower than \$20,000;
 - b) Has an annual aggregate attachment point, for Small Employers, that is lower than the greater of:
 - i) \$4,000 times the number of group members;
 - ii) 120 percent of expected claims; or
 - iii) \$20,000;
 - c) Has an annual aggregate attachment point, for any groups other than Small Employers, that is lower than 110 percent of expected claims; or
 - d) Provides direct coverage of health care expenses of an individual.
- B. The Commissioner may adjust the dollar amounts set forth in Paragraph A, above, to reflect appropriate inflation factors and medical trends in Vermont. The Commissioner may amend these dollar amounts in increments of \$100; any adjustments made to the dollar amounts set forth in Paragraph A or Paragraph B, above, must be in increments of \$100. The Commissioner shall publish any adjustment to the dollar amounts set forth in Paragraph A, above, at least six (6) months before the date such adjustment is to become effective.

Section 5. Required Disclosure Provisions.

Each health care stop loss insurance policy or contract shall include on the first page of the policy or contract, or attached thereto, in either contrasting color or in bold-faced type at least equal to the size of the type used for policy or contract captions, prominent and clear disclosure indicating whether claims under the policy or contract are paid on a “run-in”, “paid”, “run-out” or other basis, and, to the extent such terms are used, what those terms mean. If a “terminal liability” option is available under the policy or contract, the policy or contract shall so state, and shall include a clear description of such option. If the policy or contract restricts covered claims to those that are both incurred and paid by the insured during the contract period, then the policy or contract shall include the following prominent statement:

Only eligible expenses that are **both** incurred under the group health plan and paid by the group health plan within the stated contract period for health care stop loss insurance are reimbursable under this policy.

Section 6. Form Filing Requirements.

- A. Insurers shall file all forms for approval by the Commissioner prior to use of a stop loss insurance policy form. No form shall be approved if it contains any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state.
- B. Forms, as used in this Rule, shall include the following: all product forms, including but not limited to, policy forms, member handbooks, certificates, endorsements, riders, and applications.

Section 7. Rate Filing Requirements.

- A. Prior to implementation, carriers shall file for approval rate filings that include, at a minimum, the following:
 - (i) a certification by a member of the American Academy of Actuaries which certifies a carrier's compliance with this section and the Act. Such certification shall include sufficient detail for the Commissioner to verify that such certification is appropriate. Carriers shall provide additional information as requested by the Commissioner in order to verify representations in the rate filing;
 - (ii) a statement by a member of the American Academy of Actuaries that the rates are reasonable in relation to the benefits provided, and that they are neither excessive, deficient, nor unfairly discriminatory;
 - (iii) a description of the methodology for calculating the requested rate;
 - (iv) an identification of the effective date that the rates were designed for and the effective period of the rates; and
 - (v) an explanation of adverse selection factors considered by the carrier.
- B. In addition, for policies issued to Small Groups, carriers shall file premium rates for approval prior to implementation. No rate shall be approved if it is unjust, unfair, inequitable, misleading or contrary to the law of this state. Notice of a premium rate increase shall be provided to insureds at least 45 days prior to implementation, subject to waiver as approved by the Commissioner. In no event shall rate increases be implemented without at least 30 days written notice to the insured.

Section 8. Severability.

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 9. Effectiveness.

This regulation shall become effective with respect to health care stop loss insurance policies issued or renewed six (6) months after April 29, 2009; provided, the Commissioner may waive or modify one or more of the provisions of this regulation for any health care stop loss insurance issued by a captive insurance company or risk retention group under a plan of operation satisfying the underlying purposes of this rule as determined by the Commissioner. Administration and enforcement of this rule with respect to Vermont-domiciled captive insurance companies and Vermont-domiciled risk retention groups shall be by the Department's Captive Insurance Division consistent with the responsibilities of the Division and the Commissioner under Chapter 141 and Chapter 142 and Title 8.